

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1244 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

SHAAMJI RAGHA MATA

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Appearance:

Mr. M.A. Bukhari APP for appellant.

MR CH VORA for Respondent No. 1.

Respondent No.2 - served.

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 13/10/97

ORAL JUDGEMENT

It may be stated to the credit of the learned APP Mr. Bukhari that he has succeeded to the extent of taking the matter out of the purview of part of breach of rule 17. But the result would not be different than what it was before the trial court.

The reason is that as per Rule 17 read with Rule 7 of the Prevention of Food Adulteration Act, 1954 ('the Act' for short), the container has to be placed after applying proper fastener into a paper wrapping and applying strip of paper as well as twine, four seals are to be applied as stated in rule 7. Thereafter the sample thus packed and prepared has to be sent in sealed packet to the public analyst as per rule 17 (a).

What Public Analyst has received as per Ex.129 is the container covered in wrapper but that container so covered with seal is not put in a packet which also was required to be sealed. That is why in Ex.129 against the seals of outer cover which was obtained by the public analyst it was mentioned that there was no outer cover. This is what weighed with the trial court, namely, failure on the part of the prosecution to show that in accordance with rule 17 the sample was sent for analysis on the day succeeding the date on which the sample was drawn or the day on which the sample was drawn. In fact the position is otherway round. The sample was despatched as a parcel in S.T. Bus as per Ex.126 for which receipt was also obtained from the S.T. authorities and also sent by Registered post A.D. under Ex.125.

The alleged breach of rule 17 with regard to despatch of sample is successfully shown to have been complied with reference to the aforesaid documents on record and hence that finding of the learned trial Judge cannot be sustained.

However, with regard to the breach of the remaining part of rule 17 read with rule 7, the situation is as noted above from Ex.129. The net result, therefore, is that the appeal fails and the order of acquittal passed by the trial court will have to be confirmed. Accordingly the appeal is dismissed.